

CECIL K. WOODLOCK
ANTHONY J. VISCO

IBLA 77-548; IBLA 77-586

Decided December 6, 1978

Appeals from separate decisions of the New Mexico State Office, Bureau of Land Management, dismissing a protest against issuance of a lease, and rejecting a lease offer. NM 31116.

Dismissal affirmed, rejection reversed and case remanded.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Where an entry card in a public drawing is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent otherwise required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

2. Oil and Gas Leases: Applications: Generally

Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play other requirements of pertinent regulations.

3. Oil and Gas Leases: Applications: Generally

A protest filed by the No. 2 drawee against the issuance of a lease to the No. 1 drawee is properly dismissed where the only grounds asserted for rejecting the offer are that offeror used an address other than his own and that an agent or attorney-in-fact completed the drawing entry card and failed

to submit the statements required in 43 CFR 3102.6-1, and it has been shown that the signature on the card was made by the offeror.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for Cecil K. Woodlock; Anthony J. Visco, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Anthony J. Visco, the No. 1 drawee for parcel NM 807, appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated September 1, 1977, rejecting his oil and gas lease offer NM 31116. The offer was rejected because "the signature on the card is not an original signature," and a leasing service had "discretionary authority to sign and formulate offers in his name," creating an agent or attorney-in-fact relationship requiring compliance with 43 CFR 3102.6-1.

Cecil K. Woodlock, the No. 2 drawee, appeals from the August 1, 1977, dismissal of his protest to the issuance of a lease to Mr. Visco, the No. 1 drawee. The basis for the dismissal was that the ground asserted, use of a leasing service's address on the drawing entry card (DEC), is no basis for rejection of an offer. In his appeal, Wooklock also asserted the Visco offer was invalid for failure to comply with section 3102.6-1. These appeals were consolidated by order of this Board dated October 7, 1977.

On or about June 4, 1977, Mr. Visco submitted a personally signed DEC, a filing fee, a service fee, and a subscription form to the Independent Oil Lease Associates (IOLA), a filing service. The subscription form authorized IOLA to select a parcel, complete the DEC and submit it to BLM on behalf of Mr. Visco. It clearly states that IOLA has no interest whatsoever in any leases which may be issued to the subscriber.

[1] An examination of the DEC and the affidavit submitted by Mr. Visco, convinces us that the signature on the card was placed there by Mr. Visco in his own hand. In rejecting the offer, BLM relied on 43 CFR 3102.6-1(a)(2), which provides:

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one * * *.
[Emphasis added.]

BLM's conclusion that the signature on the card is not an original signature is in error. Where an entry card in a public drawing is signed by the offeror but completed by an agent or attorney-in-fact, the separate, signed statements by the attorney-in-fact or agent required by 43 CFR 3102.6-1 need not be filed. Virginia A. Rapozo, 33 IBLA 344 (1978).

[2] Nor do grounds for rejection lie in the fact that Mr. Visco signed an uncompleted form which was then further prepared by IOLA. Where the DEC has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play any other provision of this regulation. D. E. Pack (On Reconsideration), 38 IBLA 23 (1978); Evelyn Chambers, 31 IBLA 381 (1977); D. E. Pack, 31 IBLA 283 (1977).

[3] A protest filed against the issuance of a lease to the No. 1 drawee by the No. 2 drawee is properly rejected where the only grounds asserted for rejecting the offer are that Visco used an address not his own and that an agent or attorney-in-fact completed the card and failed to submit the statements required in 43 CFR 3102.6-1, and it has been shown that the signature on the card was made by the offeror. Mr. Woodlock's argument fails to give effect to the first 12 words of the regulation quoted above. "Clearly the section mandates separate statements by the principal and the agent only where the agent signs the lease offer." Virginia A. Rapozo, supra at 346. Here, the offeror personally signed the offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the dismissal of the protest is affirmed, the rejection of the lease offer is reversed, and the case is remanded to the BLM New Mexico State Office for appropriate action consistent with this decision.

Joan B. Thompson
Administrative Judge

We concur in the result:

Joseph W. Goss
Administrative Judge

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING IN THE RESULT:

As even a casual review of the various opinions rendered by this Board in D. E. Pack (On Reconsideration), 38 IBLA 23 (1978), makes clear, there has been no more fecund ground for disagreement among the various administrative judges of IBLA than the application of the regulations relating to drawing entry cards (DEC). It is, therefore, with some trepidation that I submit my views concerning one facet of the general problem.

The difficulty which I discern with the result herein relates to the practice, increasingly prevalent, of permitting oil and gas lease applicants to sign drawing entry cards in blank, leaving completion of the offer to third parties. The majority opinion correctly reflects past Board treatment of this issue. The cases cited therein, D. E. Pack (On Reconsideration), *supra*; Virginia A. Rapozo, 33 IBLA 344 (1978); Evelyn Chambers, 31 IBLA 381 (1977); D. E. Pack, 31 IBLA 283 (1977), clearly support the proposition that completion of the DEC by a third party after the signature of the offeror has been applied to the card is permissible. I would submit, however, that this entire line of cases is incorrect.

In the first Pack case, 31 IBLA 283 (1977), the Board adverted to 43 CFR 3102.6-1(a), which provides for submission of a separate statement of an attorney-in-fact or agent where such attorney-in-fact or agent signs the lease. The decision then stated "where the DEC was signed by the applicant, completion of the DEC by a duly-authorized agent is not contrary to the regulations." Id. at 287.

This rationale was expanded in Evelyn Chambers, *supra*. Therein the Board stated:

In imprinting their signatures on the cards appellants certify as to their qualifications to hold oil and gas leases under the law, that no other entry cards are filed for the parcels involved, that each is the sole party in interest with respect to the parcel applied for, or if not, that the names of other parties were listed below and that they agree to be bound to leases on the appropriate form. See Evelyn Chambers, 27 IBLA 317 (1976). These certifications are made as of the date entered on the card. Cissie A. Reinauer, 29 IBLA 295 (1977); John R. Mimick, 25 IBLA 107 (1976). Neither the card nor the regulations set forth requirements that the applicant certify knowledge as to the parcel applied for, or that the parcel number be entered on the card prior to signature. We conclude that appellant's signing of the drawing cards before

the parcel numbers were entered thereon does not, in and of itself, disqualify them from receiving the leases.

31 IBLA at 384.

The other two cases decided by the Board which relate to this point, Rapozo and the second Pack, do not enlarge upon this rationale. Thus, the decisions of the Board have been premised on two considerations: 1) that the regulation, 43 CFR 3102.6-1(a), requires a separate statement only where the agent signs the DEC; and 2) that a signature of an applicant, even when affixed in blank, is sufficient to fulfill the certification requirements of the DEC. The first consideration is, I believe, irrelevant, while the second conclusion is erroneous.

The crucial question is the adequacy of the certification. The applicability of 43 CFR 3102.6-1(a) is primarily nongermane since it only relates to the necessity of filing an agency statement. In the abstract, the regulation simply does not apply when an applicant affixes his own signature on a DEC.

The contention that a signature in blank fulfills the requirement of certification is a different matter. The DEC states:

Undersigned offers to lease for oil and gas all or any portion of the identified parcel of land which may be available for noncompetitive leasing, and certifies: * * * (2) applicant's interests in oil and gas offers to lease, leases, and options do not exceed the limitation provided by 43 CFR 3101.1-5; (3) applicant has not filed any other entry card for the parcel involved, * * *. [Emphasis supplied.]

Initially, it should be noted that the certification relates to "the identified parcel of land." When the offeror signs in blank there is no identification to which the certification can attach. Secondly, I find it difficult to perceive how an applicant can, in good faith, certify that he does not have outstanding offers to lease exceeding the limitation of 43 CFR 3101.1-5 when he does not even know the parcel or parcels for which he is applying. Similarly, since the offeror has not completed the card he must remain totally in the dark as to whether, in point of fact, he has filed multiple filings on any specific parcel. See, e.g., Imre Prepeliczay, 22 IBLA 13 (1975).

Additionally, Chambers noted that the certification of the statements on the DEC are made as of the date entered on the card. 31 IBLA at 384. See also John Willard Dixon, 28 IBLA 275 (1976);

Helen E. Ferris, 26 IBLA 276 (1976). As a matter of practice, however, the date is either left blank by the applicant or altered upon completion of the DEC by the third party who then enters the date. Thus, the date on the DEC is normally not the date on which appellant certified compliance, since the actual certification occurs upon signature of the DEC. See Thomas Buckmann, 23 IBLA 21 (1975). The applicant can scarcely be said to be certifying all of the statements as of a specific date when he does not know what that date is.

The mere denomination of the third party as the "agent" of the applicant does not resolve this dilemma. The agent is not in a position to make either of the two certifications. First of all, the applicant may have decided to independently file on the same parcel. See Imre Prepeliczay, supra. Second, there is no assurance that the agency is exclusive. Thus, the applicant may simultaneously employ two agents for the selection of parcels, each of which might select the same parcel. These possibilities are vitiated when the clear language of the DEC is given effect, viz., that in relation to the identified parcel the applicant certifies that the requirements of the laws and regulations have been met. Thus, I would hold that the signature in blank of a DEC and its completion by a third party cannot provide the certification required by the DEC and necessitates rejection of the lease offer. 1/

However, inasmuch as the majority of the Board evinces no inclination to recede from its past precedents I concur with the result of this decision, it being in accord with those precedents. In the future, until such time as a majority of the Board shall reconsider this matter, I will merely note my concurrence with the result reached in similar cases.

James L. Burski
Administrative Judge

1/ The point raised by Judge Goss in his concurrence, namely that the regulations permit an agent to prepare and submit the entire offer, is certainly relevant. The problem is that if such a course of action is undertaken the agent and the offeror are required under the regulation, 43 CFR 3102.9-1(a)(2), to submit separate statements detailing the agency relationship. The entire process of in blank signing of DEC's developed as a means of circumventing this requirement. This process of circumvention has been aided, albeit reluctantly, by the Board decisions cited in the main opinion.

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I agree with the main opinion, but feel that the points raised by Judge Burski deserve discussion. The concurring opinion, in effect, sets forth that under section 3102.6-1, "signed" includes, in addition to the affixing of the signature, the completion of the remainder of the certificate, and that after the offeror's signature, such completion cannot be accomplished by an agent. There is no such prohibition in the regulations. Rather, despite the possibility that an agent may improperly fill out and submit the offeror's certification, Departmental regulation 43 CFR 3102.6-1, specifically permits an agent to prepare and submit the entire offer. The possible difficulties are in no way enhanced where only part of the offer-certification is prepared by the agent, the principal being responsible for the acts of the agent in either event.

The Department has repeatedly held that regulations should be so clear there is no basis for an oil and gas lease applicant's noncompliance before they are interpreted so as to deprive him of a statutory preference right to a lease. E.g., A.M. Shaffer, 73 I.D. 293 (1966). Many thousands of oil and gas lease offers have been filed by or on behalf of offerors in reliance upon the Departmental construction that an entry card may be completed by an agent. I feel that if the changes suggested by Judge Burski are desirable, such should be accomplished under the rulemaking procedures rather than by Board action.

Joseph W. Goss
Administrative Judge

